UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

WILLIAM P. CASTILLO,

Petitioner,

vs.

TIMOTHY FILSON, *et al.*,

Respondents.

_____/

2:04-cv-00868-RCJ-GWF

ORDER

Introduction

In this capital habeas corpus action, the respondents filed their answer on August 1, 2016, (ECF No. 189), the petitioner, William P. Castillo, filed his reply on December 23, 2016 (ECF No. 195), and the respondents filed a response to Castillo's reply on May 12, 2017 (ECF No. 215). Castillo's remaining claims for habeas corpus relief are, therefore, fully briefed, and under submission to the Court.

On December 23, 2017, Castillo also filed four motions: a motion for partial reconsideration of the Court's order of March 2, 2016 (ECF No. 196); a motion for evidentiary hearing (ECF No. 201); a motion for leave to supplement his second amended habeas petition (ECF No. 199); and a motion for stay and abeyance (ECF No. 198). Each of those motions is fully briefed and before the Court.

Motion for Reconsideration and Motion for Evidentiary Hearing

In his motion for reconsideration (ECF No. 196), Castillo requests reconsideration of the Court's ruling, in its March 2, 2016 order (ECF No. 184), that he did not show cause and prejudice, under *Martinez v. Ryan*, 132 S.Ct. 1309 (2012), for his procedural default of certain of his claims in state court. *See* Order entered March 2, 2016 (ECF No. 184), pp. 41-43. Respondents filed an opposition to that motion on May 16, 2017 (ECF No. 217). Castillo replied on June 15, 2017 (ECF No. 220).

The Court "possesses the inherent procedural power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be sufficient," so long as the court has jurisdiction. *City of L.A., Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir. 2001) (emphasis and quotation omitted).

The ruling in the Court's March 2, 2016 order that Castillo challenges is the following:

> With respect to the procedural default of his claims of ineffective assistance of counsel in Claims 1(I)(A), 1(II)(A), 1(II)(B), 1(II)(C), 3(I)(C), 3(II)(B), 4, 5, 6, 7(II)(A), 7(II)(B), 10, 11 and 12, Castillo argues, relying upon *Martinez v. Ryan*, ___ U.S. ___, 132 S.Ct. 1309, 182 L.Ed.2d 272 (2012), that ineffective assistance of counsel in his first state habeas action was cause for his procedural default. *See* Opposition to Motion to Dismiss, pp. 96-149.
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> In *Martinez*, the Supreme Court noted that it previously held, in *Coleman v. Thompson*, 501 U.S. 722, 746-47 (1991), that "an attorney's negligence in a postconviction proceeding does not establish cause" to excuse procedural default. *Martinez*, 132 S.Ct. at 1319. The Court in *Martinez* "qualif[ied] *Coleman* by recognizing a narrow exception: inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." *Id.* at 1315. The Court described "initial-review collateral proceedings" as "collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial." *Id.*
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> Here, however, Castillo's assertion under *Martinez*, that ineffective assistance of counsel in his first state habeas action was the cause of his procedural default, under the state statute of limitations, in his second state habeas action, is flawed. In *Martinez*, the petitioner's procedural default was based on an Arizona rule barring successive petitions; as such, the petitioner's procedural default was complete when his counsel in the initial-review collateral proceeding failed to raise claims. *See Martinez*, 132 S.Ct. at 1314. The procedural default at issue here is different. Castillo's procedural default was grounded on the state statute of limitations, NRS 34.726. The procedural default occurred because Castillo delayed for more than ten years after his direct appeal ended on April 28, 1999 -- and for almost five years after the appeal in his first state habeas action ended on October 27, 2004 -- before

> initiating his second state habeas action on September 18, 2009. The attorney who represented Castillo in his first state habeas action represented Castillo only until late 2004, while Castillo's first state habeas action was pending; that was only part of the time over which the statute of limitations default occurred. Ineffective assistance of Castillo's first state post-conviction counsel cannot explain the last five years of the delay. In essence, there is an insufficient causal connection between the alleged ineffective assistance of Castillo's first post-conviction counsel and the procedural default. As a matter of equity, this court does not accept Castillo's assertion of ineffective assistance of his counsel in his first state habeas action as cause for his failure to comply with the state statute of limitations in his second state habeas action. *See* [*Nguyen v. Curry*, 736 F.3d 1287, 1289 (9th Cir. 2013)] ("The Supreme Court in *Martinez* established an equitable rule under which the failure of an ineffective counsel or pro se petitioner to raise, in a state court initial-review collateral proceeding, a claim of ineffective assistance of counsel ('IAC') at trial can be 'cause' to excuse a state-court procedural default."). Ineffective assistance of counsel in Castillo's first state habeas action does not function as cause for the procedural default of the claims of ineffective assistance of counsel in Claims 1(I)(A), 1(II)(A), 1(II)(B), 1(II)(C), 3(I)(C), 3(II)(B), 3(II)(C), 4, 5, 6, 7(II)(A), 7(II)(B), 10, 11 and 12.
>
> Castillo requests an evidentiary hearing concerning his argument that he can show cause and prejudice for the procedural default of his ineffective assistance of counsel claims, because of ineffect assistance of counsel in his first state habeas action. *See* Motion for Evidentiary Hearing, pp. 3-8. However, the court's rulings in this regard -- that ineffective assistance of Castillo's counsel in his first state habeas action cannot explain the long delay that led to his default under NRS 34.726 in his second state habeas action, and that there is an insufficient causal connection between the alleged ineffective assistance of Castillo's counsel in his first state habeas action and the procedural default at issue -- do not turn on any question of fact. There is no showing of any need for an evidentiary hearing.

Order entered March 2, 2016 (ECF No. 184), pp. 41-43 (footnotes omitted).

Castillo waited more than nine months, and until more than four months after the respondents filed their answer, before seeking reconsideration of this ruling in the Court's March 2, 2016, order. While neither the Federal Rules of Civil Procedure nor the local rules of this Court set a limit on the time for seeking reconsideration of an interlocutory order, such a motion must, in this Court's view, be made within a reasonable time. There is no apparent reason -- such as a change in the law or discovery of new facts -- explaining Castillo's delay. The Court finds that Castillo unreasonably delayed in seeking reconsideration of the March 2, 2016, order, and the Court will deny the motion on that ground.

Additionally, however, the Court determines that Castillo does not show that reconsideration is warranted. In his motion for reconsideration, Castillo argues that the Court "refused to consider

his allegations of cause-and-prejudice under *Martinez v. Ryan*, 132 S.Ct. 1309 (2012). *See* Motion for Partial Reconsideration (ECF No. 196), pp. 1, 3. That is an inaccurate characterization of the Court's order. The Court considered, but rejected, Castillo's assertion of cause and prejudice under *Martinez*. Castillo also argues that the Court ruled that "*Martinez* does not apply to state statute of limitation default bars." *See id.* at 5-8. That argument, too, is plainly inaccurate. The Court did not rule that *Martinez* does not apply to state statute of limitations bars; rather, the Court ruled that, as a matter of equity, Castillo's particular assertion of cause and prejudice under *Martinez* fails.

It is undisputed that the exception to the rule of *Coleman v. Thompson*, 501 U.S. 722 (1991), established by *Martinez*, is equitable in nature. *See Martinez*, 132 S.Ct. at 1318 ("Allowing a federal habeas court to hear a claim of ineffective assistance of trial counsel when an attorney's errors (or the absence of an attorney) caused a procedural default in an initial-review collateral proceeding acknowledges, as an equitable matter, that the initial-review collateral proceeding, if undertaken without counsel or with ineffective counsel, may not have been sufficient to ensure that proper consideration was given to a substantial claim."); *see also* Motion for Partial Reconsideration, pp. 4, 6, 9 (repeatedly recognizing that *Martinez* rule is a matter of equity). This Court's ruling was that, as a matter of equity, Castillo's assertion of ineffective assistance of counsel in his first state habeas action as cause for his failure to comply with the state statute of limitations failed because "Castillo delayed for more than ten years after his direct appeal ended on April 28, 1999 -- and for almost five years after the appeal in his first state habeas action ended on October 27, 2004 -- before initiating his second state habeas action on September 18, 2009." Order entered March 2, 2016 (ECF No. 184), p. 42. Ineffective assistance of Castillo's counsel in his first state habeas action was not the cause of much of the delay in Castillo's filing of his second state habeas action.

Moreover, it is notable that, had Castillo initiated his second state habeas action within a reasonable amount of time after the conclusion of his first state habeas action, he might have overcome the state-law statute of limitations bar by showing ineffective assistance of counsel in his first state habeas action. *See* Order of Affirmance, Exhibit 268, pp. 3-5 (ECF No. 144-12, pp. 4-6);

see also Crump v. Warden, 934 P.2d 247, 253 (Nev. 1997) (in Nevada capital cases, where postconviction counsel is appointed pursuant to statutory mandate, the petitioner is entitled to effective assistance of counsel, and ineffective assistance of that counsel may function as cause to overcome a procedural default); *Hathaway v. State*, 71 P. 3d 503, 505-08 (Nev. 2003) (claim of cause relative to a procedural bar, based on performance of counsel, may be made within reasonable time). Castillo's failure to initiate his second state habeas action within a reasonable time cannot be attributed to any failing of his counsel in his first state habeas action.

Castillo does not show that the Court should reconsider its ruling; the Court will deny the motion for reconsideration.

In his motion for evidentiary hearing, Castillo requests an evidentiary hearing "to develop Castillo's allegations of cause and prejudice for the delay in raising his IAC claims under *Martinez v. Ryan*, 132 S.Ct. 1309 (2012)." Motion for Evidentiary Hearing (ECF No. 201), p. 3. The Court's ruling regarding Castillo's attempt to show cause for his procedural default, under *Martinez*, does not turn on any disputed issue of fact. Castillo does not demonstrate any need for an evidentiary hearing. His motion for evidentiary hearing will be denied.

Motion for Leave to Supplement and Motion for Stay

On December 23, 2016, Castillo filed a Motion for Leave to Supplement the Second Amended Petition (ECF No. 199). In that motion, Castillo requests leave of court to add two claims to his petition: a claim, based on *Hurst v. Florida*, 136 S.Ct. 616 (2016), that it was a violation of his constitutional rights for the Nevada Supreme Court to reweigh aggravating and mitigating factors after striking two of the four aggravating factors found by the jury; and a claim that the "avoid and prevent lawful arrest" aggravating factor, one of the two remaining aggravating factors considered in the Nevada Supreme Court's reweighing, is invalid because it was not supported by sufficient evidence, and is impermissibly vague and overbroad. Castillo filed the proposed additional claims in a document entitled "Supplement to Second Amended Petition for Writ of Habeas Corpus

(ECF No. 200). Respondents filed an opposition to petitioner's motion on February 16, 2017 (ECF No. 69). Petitioner replied on February 23, 2017 (ECF No. 70).

On December 23, 2017, Castillo also filed a Motion for Stay and Abeyance (ECF No. 198). In that motion, Castillo requests that this Court stay this action while he returns to state court to exhaust his state-court remedies with respect to his *Hurst* claim. Respondents filed an opposition to that motion on April 6, 2017 (ECF No. 209), and Castillo replied on April 12, 2017 (ECF No. 214).

A petition for a writ of habeas corpus "may be amended or supplemented as provided in the rules of procedure applicable to civil actions." 28 U.S.C. § 2242; *see also* Rule 12, Rules Governing Section 2254 Cases (Rules of Civil Procedure apply to federal habeas proceedings "to the extent that they are not inconsistent."). Federal Rule of Civil Procedure 15(a) permits a party to amend a pleading with the opposing party's written consent or the court's leave. *See* Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." *Id.* "Courts may decline to grant leave to amend only if there is strong evidence of 'undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment, etc.'" *Sonoma County. Ass'n of Retired Employees v. Sonoma County*, 708 F.3d 1109, 1117 (9th Cir. 2013) (quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)). "[T]he consideration of prejudice to the opposing party carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

In *Rhines v. Weber*, 544 U.S. 269 (2005), the stay and abeyance procedure was condoned by the Supreme Court as a means by which a habeas petitioner with a mixed petition subject to dismissal under *Rose v. Lundy*, 455 U.S. 509 (1982), could fully exhaust his petition without the risk of running afoul of the one-year statutory time limit for filing federal petitions. *See Rhines*, 544 U.S. at 276. The *Rhines* Court cautioned, however, that stay and abeyance, if too frequently used, would undermine AEDPA's goals of prompt resolution of claims and deference to state court rulings. *Id.* The Court held that, in order to obtain "stay and abeyance," a petitioner must show: (1) good cause

for the failure to exhaust claims in state court, (2) that the unexhausted claims are potentially meritorious, and (3) the absence of abusive tactics or intentional delay. *Id.*; *see also Jackson v. Roe*, 425 F.3d 654, 662 (9th Cir. 2005).

With respect to Castillo's request for leave of court to add to his petition a claim based on *Hurst*, and his request for a stay while he exhausts that claim in state court, the Court determines that Castillo's *Hurst* claim is not potentially meritorious, amendment of his petition to add that claim would be futile, and a stay is unwarranted.

In *Hurst*, the Supreme Court held that Florida's capital sentencing scheme violated the Sixth Amendment right to a jury trial because, under the scheme, the jury rendered an advisory verdict but the judge ultimately found the facts necessary to impose a sentence of death. *See Hurst*, 136 S.Ct. at 624. In reaching that holding, the Court relied upon *Ring v. Arizona*, 536 U.S. 584 (2002), which held that any fact necessary for the imposition of the death penalty must be found by a jury, not a judge. *See Ring*, 536 U.S. at 589. *Ring* and *Hurst* are both based on *Apprendi v. New Jersey*, 530 U.S. 466 (200), which held that any fact that "expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict" is an "element" that must be submitted to a jury. *Apprendi*, 530 U.S. at 494.

Although a jury imposed the death penalty in Castillo's case, Castillo claims that his death sentence is unconstitutional under *Hurst* because, on the appeal in one of his state habeas actions, the Nevada Supreme Court struck two aggravating factors found by the jury, reweighed the remaining aggravating factors and the mitigating factors, and affirmed the state district court's denial of relief. Castillo reasons that, under *Hurst*, the weighing of aggravating and mitigating factors is an "element" that must be submitted to the jury and that cannot constitutionally be subject to reweighing by an appellate court.

Castillo's claim extends the holding in *Hurst* beyond its cognizable bounds. Neither *Ring* nor *Hurst* holds that the weighing of aggravating and mitigating circumstances is an "element" that must be submitted to the jury. The Court in *Ring* noted that "[t]he State's law authorizes the judge to

sentence the defendant to death only if there is at least one aggravating circumstance and 'there are no mitigating circumstances sufficiently substantial to call for leniency.'" *Ring*, 536 U.S. at 593. Yet, the *Ring* Court identified only the existence of an aggravating circumstance as an "element" that must be found by a jury to impose the death penalty. *Ring*, 536 U.S. at 589.

The Court in *Hurst* concluded that Florida's capital sentencing scheme was unconstitutional because it "required the judge alone to find the existence of an aggravating circumstance." *Hurst*, 136 S.Ct. at 624. The Court in *Hurst* made clear that it was overruling its prior cases upholding Florida's capital sentencing scheme (*Spaziano v. Florida*, 468 U.S. 447 (1984), and *Hildwin v. Florida*, 490 U.S. 638 (1989)) "to the extent they allow a sentencing judge to find an aggravating circumstance, independent of a jury's factfinding, that is necessary for imposition of the death penalty." *Hurst*, 136 S.Ct. at 624. The import of *Hurst* is its holding that the jury's advisory role under Florida law fell short of complying with the Sixth Amendment requirement of *Apprendi* and *Ring*. *Hurst* did not break new ground with respect to what determinations qualify as "elements" that must be submitted to a jury. Indeed, this Court views the determination that there are no mitigating circumstances sufficient to outweigh the aggravating circumstances to be a matter of subjective judgment that is not amenable to proof beyond a reasonable doubt. Moreover, *Hurst* did not, either explicitly or implicitly, overrule *Clemons v. Mississippi*, 494 U.S. 738 (1990), which approved of appellate court reweighing of the aggravating and mitigating factors remaining after the court strikes an invalid aggravating factor. In short, the Court finds meritless Castillo's claim that his rights were violated by the Nevada Supreme Court's reweighing of the aggravating and mitigating circumstances in his case.

Furthermore, even assuming, for purposes of analysis, that the Supreme Court's holding in *Hurst* represents a new rule supporting Castillo's claim -- this Court finds that it does not -- the Ninth Circuit Court of Appeals recently held that any such new rule drawn from *Hurst* would not apply retroactively to cases on collateral review, such as Castillo's. *See Ybarra v. Filson*, ___ F.3d ___, 2017 WL 3811118, pp. 11-14 (9th Cir., September 1, 2017). In *Ybarra*, the court of appeals

assumed for the sake of argument, as this Court does, that *Hurst* "creates a new rule," "establishes that the 'weighing determination' is an element," and "renders the Nevada sentencing scheme unconstitutional," but held that, "[n]evertheless, even after making these generous assumptions, [the petitioner] cannot obtain relief under *Hurst*." *Id.* at 12.

This Court, then, determines that Castillo's claim based on *Hurst* has no potential for success on its merits. Therefore, the Court concludes that amendment of Castillo's petition to add that claim would be futile, and a stay of this action to allow for state-court exhaustion of the claim is unwarranted.

Turning to Castillo's motion to supplement his petition to add a claim that the avoid and prevent lawful arrest aggravating factor, one of the two remaining aggravating factors considered in the Nevada Supreme Court's reweighing, is invalid because it was not supported by sufficient evidence, and is impermissibly vague and overbroad, the Court determines that that claim, as well, has no potential for success on its merits, and the addition of the claim to Castillo's petition would be futile. In addition, the Court finds that Castillo unduly delayed in seeking to amend his petition to add such a claim.

Castillo does not attempt explain why only now -- after this case has been pending for twelve years; after a four-year exhaustion stay; after resolution of a motion to dismiss raising issues concerning the statute of limitations, exhaustion of claims in state court, and procedural default; and after respondents have filed their answer -- he seeks to add to his petition a claim challenging one of the aggravating factors upon which his capital sentence was based. Castillo has unduly delayed in seeking to add this claim to his petition, and the Court will deny his motion to supplement, as to this claim, on that basis. *See Bonin v. Calderon*, 59 F.3d 815, 844-45 (9th Cir. 1995) ("[W]e have held that a district court does not abuse its discretion in denying a motion to amend where the movant presents no new facts but only new theories and provides no satisfactory explanation for his failure to fully develop his contentions originally.").

Furthermore, the Court finds that Castillo's challenge to the avoid or prevent lawful arrest aggravating factor is belied by the record, and is meritless. In *Tuilaepa v. California*, 512 U.S. 967 (1994), the Supreme Court explained that an aggravating factor withstands a constitutional challenge if it has some "common sense core of meaning ... that criminal juries should be capable of understanding." *Tuilaepa*, 512 U.S. at 973-74 (quoting *Jurek v. Texas*, 428 U.S. 262, 279 (1976)). The "core meaning" of the avoid or prevent lawful arrest aggravating factor is readily understandable. The statutory language, "to avoid or prevent a lawful arrest" (*see* NRS 200.033(5)), is specific enough to avoid arbitrary and capricious imposition of the death penalty, and it sufficiently narrows the class of defendants to which it applies. *See Wainwright v. Lockhart*, 80 F.3d 1226, 1231 (8th Cir. 1996) (upholding the validity of an Arkansas statute that the killing was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody); *Davis v. Executive Director of Dept. of Corrections*, 100 F.3d 750, 769 (10th Cir. 1996) (holding that Colorado's "avoiding or preventing lawful arrest or prosecution" sufficiently narrows the class of persons eligible for the death penalty "by putting the focus on the purpose of the murder.").

Moreover, Castillo's argument that there was insufficient evidence to support application of the avoid or prevent lawful arrest aggravating factor ignores evidence presented at his trial. Tammy Bryant testified at Castillo's trial. *See* Transcript of Trial, September 3, 1996, Exhibit 65, pp. 47-79 (ECF No. 89-19, p. 49 - ECF No. 89-20, p. 32). Bryant was Castillo's girlfriend at the time of the murder, and she lived with Castillo and his co-defendant, Michelle Platou. *See id.* at 48-49 (ECF No. 89-19, pp. 50-51). Bryant testified that the morning after Castillo and Platou burglarized Isabelle Berndt's home, and killed her, Castillo and Platou told Bryant what happened. *See id.* at 57-60. Bryant testified as follows:

> Q. Did there come a time later that morning, say in the 9 or 10:00 in the morning area, when you had occasion to have a conversation with Michelle [Platou] and William [Castillo] about the occurrences of that evening?
>
> A. Yes.
>
> Q. And where did that conversation take place?

A. At our apartment?

Q. And who was present?

A. All three of us

Q. Anyone else present?

A. No.

* * *

Q. And did William Castillo or Michelle Bryant [sic] in William Castillo's presence tell you what happened on the night of December 17th, 1995 that would cause them to bring into your residence the items you've identified as the box, the bag, and the VCR?

A. Yes.

Q. What were you told?

A. That they robbed this house.

Q. That they robbed a house?

A. Yeah.

* * *

Q. Did they tell you about anything unusual that occurred when they robbed the house?

A. They said they went into the house and Michelle got the VCR and they were looking for stuff, money, and it was really dark in there and they were going down the hallway and Michelle said that there was two people in the house because there were two pairs of shoes in the hallway.

Q. You have to speak up and be a little bit slower.

A. (Witness crying.)

Okay, Michelle said there was two pairs of shoes in the house. When they started down the hallway, it was dark and they got to the end of the hallway and Billy went into the room.

Q. By Billy, you mean William Castillo?

A. Yes.

Went into the room to check the nightstand to see if there was money in it and Michelle had hit the wall or something and made a noise to wake the person up or

something and then, as the person was waking up, Billy hit the person and then Michelle started freaking out. They both freaked out and left.

Q. When you say Billy hit the person, did he tell you what he hit her with?

A. With a tire iron.

Q. This was a tire iron that he had retrieved from Michelle Platou's vehicle?

A. Yes.

Q. Before December 17th, 1995, did you know, of your own personal knowledge, that Michelle Platou had a tire iron in her vehicle?

A. Yes.

Q. Did William Castillo tell you what he did with the tire iron after he had hit the lady with it?

A. Threw it in the garbage.

Q. Did he tell you where?

A. In a dumpster.

* * *

Q. After he hit the lady, Michelle and William left the residence that they robbed?

A. Oh, yes.

Q. And they took with them the VCR and the silverware and the booties?

A. Yes.

Q. How about some cash?

A. Yes.

Q. How much cash?

A. One hundred and fifty dollars I think. Something like that.

Q. Did they tell you why they left a second time?

A. They went back to the house because Michelle's fingerprints were in there.

Q. They believed that Michelle had left fingerprints during the burglary of the house?

A. Yes.

Q. And the second time they went back to do something about that?

A. Yes.

Q. And what were they going to do about that?

A. Burn the house.

Q. And when they talked to you at 9, 10:00 December 17th, did they tell you that they had burned the house?

A. Yes.

Id. at 56-60 (ECF No. 89-20, pp. 8-12). Bryant's testimony obviously supports a finding that Castillo killed Berndt in order to avoid arrest.

This Court determines that Castillo's proposed new claim, challenging the avoid or prevent lawful arrest aggravating factor, is meritless, such that amendment to add that claim to his petition would be futile, and that, at any rate, Castillo unduly delayed in requesting leave of court to add such a claim to his petition. The Court will deny Castillo leave of court to supplement his petition with this claim.

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IT IS THEREFORE ORDERED that petitioner's Motion for Partial Reconsideration of Procedural Order (ECF No. 196) is **DENIED**.

IT IS FURTHER ORDERED that petitioner's Second Motion for Evidentiary Hearing (ECF No. 201) is **DENIED**.

IT IS FURTHER ORDERED that petitioner's Motion for Leave to Supplement the Second Amended Petition (ECF No. 199) is **DENIED**.

IT IS FURTHER ORDERED that petitioner's Motion for Stay and Abeyance (ECF No. 198) is **DENIED**.

Dated this 18 day of September, 2017.

UNITED STATES DISTRICT JUDGE